

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BRENT NICHOLSON, <i>et al.</i> ,)	No. C12-1121RSL ORDER GRANTING IN PART PLAINTIFFS' MOTION FOR RECONSIDERATION
)	
Plaintiffs,)	
v.)	
THRIFTY PAYLESS, INC., <i>et al.</i> ,)	
Defendants.)	

On February 18, 2014, the Court dismissed plaintiffs' claims regarding the Silverdale and Bremerton projects on the ground that the last agreed-upon date for delivery had already passed when defendants sent the termination letters for those projects. Plaintiffs filed a timely motion for reconsideration. Dkt. # 60. Plaintiffs argue that a June 15, 2010, email indicating defendants' willingness to extend the delivery dates constitutes a modification of the leases and/or a waiver of the no oral modification provision. In the alternative, plaintiffs argue that the email is evidence that the delivery dates were not material and can form the basis of a promissory estoppel claim. Pursuant to Local Civil Rule 7(h)(3), the Court gave defendants an opportunity to respond to the motion for reconsideration. Dkt. # 63.

Having reviewed the submissions of the parties, the Court finds that the email string evidencing defendants' willingness to extend the delivery dates does not constitute a modification of the lease, a waiver of the "no oral modifications" provision, or a promise on which a promissory estoppel claim could be based. It is, however, evidence from which a

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1 reasonable fact finder could conclude that the breach of which defendants complain was not
2 material. Given the circumstances of this case, including defendants' acknowledgment that they
3 did not want the stores to be delivered too far in advance of an expiring lease and their
4 willingness to extend the deadlines of these and other leases, a reasonable jury could determine
5 that the failure to deliver the Silverdale and Bremerton projects by the dates set forth in the
6 original leases was not a material breach and did not discharge defendant's obligations under the
7 contracts.

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9 Dated this 22nd day of May, 2014.

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12 Robert S. Lasnik
13 United States District Judge
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